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CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION
Office of Environmental Trust
P O Box 150, Nespelem, WA 99155
509-634-2426

March 12, 2003

Monica Tonel
US Environmental Protection Agency
1200 6th Avenue, (ECL-115)
Seattle, WA 98101

Dear Monica

On behalf of the Colville Confederated Tribes (CCT) I wish to submit some specific information to the Environmental Protection Agency of significance regarding the Upper Columbia River

Territorial Rights

Tribal lands do not merely border the Columbia River CCT claims ownership to a portion of Lake Roosevelt contiguous with the reservation Grand Coulee Dam, a federal reclamation project operated by the Bureau of Reclamation (Reclamation), is used for flood control, river regulation, irrigation, fishery management and power production The dam blocks the free flow of the Columbia River at the point where the Columbia forms the southern boundary of the Colville Reservation Lake Roosevelt, the reservoir created behind the Grand Coulee Dam contains nine million acre-feet of water and stretches north approximately 150 miles to the Canadian Border

Construction of the Grand Coulee Dam resulted in further diminishment of the Tribes' Reservation as traditional Tribal lands were taken by the United States in aid of the reclamation project Approximately one fourth of the Lake Roosevelt reservoir area above the dam was set aside for the paramount use of CCT and the Spokane Tribe for hunting, fishing and boating The Secretary of Interior, in 1946, designated an "Indian zone" which comprises essentially all of the freeboard, drawdown and water area inside the original boundaries of the Reservation except for the area immediately around the dam. This "Indian zone" extends to the centerline of Lake Roosevelt except for a strip in the center of Lake Roosevelt, which is preserved as a navigation lane

The "North Half"

Former reservation lands in the area north of the current Colville Indian Reservation to the Canadian border is referred to by the Tribes as the "North Half" In 1891, the Tribes entered into an Agreement with the U S , ceding the 1 5 million acre North Half for one dollar per acre but reserving hunting, gathering, fishing, and water rights thereon, including within the North Half portions of the Columbia and Okanogan Rivers The U S Supreme Court has affirmed the validity and vitality of the Tribes' reserved rights in the former North Half. See *Antoine v Washington*, 420 U S 194 (1975)

EPA must recognize the history of the North Half and that this area is a critical tribal resource utilized by the CCT in the past and today Understanding risk to tribal members from contamination found in lands still used and owned by the Tribe and its members despite the shift in political boundaries are essential

Contamination on Tribal Lands

Tribal lands affected by the contamination include contaminated sediments found within the boundaries of the current reservation and the "North Half " During EPA's 2001 collection of samples for the Site Investigation of Lake Roosevelt and the Upper Columbia River, EPA collected samples within the exterior boundaries of the Colville Indian Reservation, specifically, samples CS004, CS005, CS006 and CS010

These four samples met EPA's criteria for being "observed releases" These samples document that contamination was found on the Colville Indian Reservation. Attached is a map generated by our Tribal GIS program with those sample locations and the original channel of the river, and the samples that lie within and outside the current reservation boundary

Tribal members, given their cultural, spiritual and subsistence practices *are being* exposed to hazardous substances given that they are found on the reservation and areas used by them for their practices Indians suffer disproportionate health effects due to environmental contamination because of their greater dependence on these natural resources than most other populations

Importance of the River, Tribal Practices and Ecological Receptors of Tribal Significance

Tribal lands and the North Half where EPA has documented contamination by hazardous substances, are areas where tribal members have deep spiritual connections and, in some cases, practice subsistence living. For untold thousands of years our people have been closely linked with the Columbia River. Our ancestral homeland extends far beyond the current boundaries established by Presidential Executive Order of 1872 Our traditional fishing, hunting and gathering range extended northward into what is now British Columbia, east into Idaho and far south and west of the present reservation boundary Tribal members utilize the river for subsistence, economic and cultural purposes. Our ancient hunting and fishing camps are located throughout the river as well as the final resting-place for our ancestors The fisheries of Lake Roosevelt provide sustenance to many tribal members, and the economic opportunities presented by the lake are increasingly relied upon by the tribal membership and tribal government

Importance of the River to CCT and Tribal Subsistence Practices

Throughout our history, fishing was the primary subsistence method for the majority of the tribes near the Columbia River Salmon were the primary species sought but many other species including steelhead trout, sturgeon, white fish, bull trout and various rough fish species were captured and consumed. Salmon and their annual return played a significant role in the culture, religion and economy of the Colville people Salmon were managed to ensure a future supply, dried for subsistence consumption and traded with neighboring tribes for necessities Prior to the construction of Grand Coulee Dam, the focal point of tribal life was the Columbia River and its associated fishery Today, salmon and the river are still a very large part of tribal life and culture The CCT fish for salmon to the base of Chief Joseph Dam and in the Okanogan River In Lake Roosevelt, salmon have been replaced by residential fish species in Lake Roosevelt In 1942, with the completion of Grand Coulee Dam all anadromous fish runs forever ceased above the dam Today, resident fish species play a large role in subsistence fishing by tribal members, however native species remain important to the Tribes

Historically, tribal members consumed large numbers of anadromous and resident fish species (Ray, 1972) Today tribal members who fish for subsistence in the "blocked area" above Chief Joseph and Grand Coulee Dams including Lake Roosevelt are limited to resident fish species, such as rainbow trout (*Oncorhynchus mykiss*), kokanee salmon (*Oncorhynchus nerka*), white sturgeon (*Acipenser transmontanus*), walleye (*Stizostedion vitreum*) and white fish (*Prosopium williamsoni*) Bull trout (*Salvelinus confluentus*) until very recent times was also used for subsistence

Various researchers have documented contamination in fish consumed by people, such contamination has resulted in the issuance of a fish consumption advisory by Washington State Department of Health (WSDH) on selected Lake Roosevelt fish species As a result, the subsistence practices of the tribal members create higher health risks for our tribal members as compared to the average American

Ecological Receptors of Tribal Significance

Although benthic populations are considered depressed in Lake Roosevelt (Munn, 2000), worms make up a substantial portion of the benthic community represented in the reservoir system (Griffith and McDowell, 1992) Worms (Oligochaeta) can accumulate toxins that are attached to sediment particles that the worms ingest The toxins are then transferred up the food chain to higher predators such as fish (NOAA, 2002)

High contaminant levels of PCBs, dioxins, furans and mercury in lake and riverine sediments can lead to depressed levels of sex steroids, delayed maturation, fish abnormalities, increase the ratio of immature to mature fish and cause early maturation (precocity) (Lyons and MacLock, 1996, Wrona et al , 1996, Castro and Reckendorf, 1995, Kubiak, 1997, and Ingersoll, 1993)

Fisheries that are currently and/or have been historically used by the tribes are in serious decline or evidence lack of health More specifically, the populations at issue used by the tribes are as follows

White Sturgeon (*Acipenser transmontanus)*
The white sturgeon population within the Upper Columbia River, specifically above Grand Coulee Dam, is in severe decline Sturgeon are bottom-dwellers, which means they would be at severe risk when living in an area of contaminated sediments During a 2000 USFWS survey of sturgeon populations from the mouth of the Columbia to the U.S -Canada boundary, it was determined that little if any juvenile recruitment is occurring (Personal communication from Monte Miller to Richard LeCaire, 2002) During 2002, the Lake Roosevelt Monitoring Project participated in a limited sturgeon survey that included a joint international effort by fisheries personnel from the CCT, WDFW, the Spokane Tribe and British Columbia. A total of four juvenile sturgeons were captured, examined and released Two of the fish were part of an earlier release by B C fisheries at the Hill Creek Sturgeon facility as evidenced by the presence of a pit tag The remaining two fish had no tags or marked and were considered as wild origin (Miller, 2002). Sturgeon fishing has been halted by the Colville Tribal Fish and Wildlife department and by the WDFW off of the reservation due to lack of juvenile recruitment

Rainbow Trout (*Oncorhynchus mykiss*)
The resident rainbow trout fishery is managed as a put and take fishery supported by various Bonneville Power Administration funded projects and hatcheries (with the exception of the Sanpoil River adfluvial rainbow trout) It is comprised mainly of rainbow trout The rainbow trout fishery in the lake is a high quality fishery with a great amount of fishing pressure

Kokanee Salmon (*Oncorhynchus nerka*)
Kokanee are of special interest to tribal members because they are a landlocked or resident form of the sockeye salmon that used to pass Kettle Falls in great numbers Kokanee and steelhead are preferred by tribal members over warm water species, such as bass, perch and walleye For CCT, kokanee represent a link to the once abundant salmon runs of the basin Kokanee salmon survive in Lake Roosevelt despite contamination, heavy fishing pressure and the lack of a natural-production kokanee run Kokanee have dwindled to a point that there may not be sufficient numbers to prevent extirpation (LeCaire, 2001) A once substantial run of wild origin kokanee in the San Poil River has dwindled to only a pair or two annually (Young and Shaklee, 2002)

Mountain Whitefish (*Prosopium williamsoni)*
Mountain whitefish have always been present in the upper Columbia basin They were an integral part of the Columbia River fishery critical to the subsistence of the Columbia River Indian bands (Scholz et al , 1985) Mountain whitefish numbers are depressed.

Walleye (*Stizostedion vitreum*)
Walleye are a non-native species illegally introduced to Lake Roosevelt during the late 1950's Walleye have become numerous and are an important fish resource on Lake Roosevelt Walleye are probably of more importance to non-tribal members as a sport fish than to tribal members The walleye fishery is important to the regional economy through license sales, fuel, grocery, motel and tourism business expenditures Walleye were listed as a species of concern in the 1994 WSDH fish consumption advisory (Munn, 2000) Current information from a WDFW licensed fishing guide on the upper Columbia near Northport indicated that walleye are becoming smaller in size, their numbers are decreasing and many are obviously deformed The deformed fish have curled fins and lack one eye (Middlesworth, 2002)

Bull Trout (*Salvelinus confluentus*)
Bull trout are listed as a threatened and endangered species by the USFWS Adult kokanee trapping in Big Sheep Creek documented the presence of two adult bull trout in spawning condition during the fall 2000

spawning period (LeCaire, 2000) The presence of juvenile bull trout was recorded during 1990 in Onion Creek (LeCaire and Peone, 1999) Another bull trout was documented at Hawk Creek by Eastern Washington University (Scholz, 2001)

Historically, bull trout played a significant role in tribal culture The Lakes People of CCT originally called themselves the Sngaytskstx, which translates as "Bull Trout people " This term *sngaytskstx* is the Okanogan-Colville name for the native char/bull trout or Dolly Varden char *(Salvelinus confluentus)*, a fish for which the arrow lakes in British Columbia was noted (Bouchard and Kennedy, 2000) Bouchard and Kennedy further stated that the Lakes People of CCT had a direct traditional relationship with the region and the Columbia River

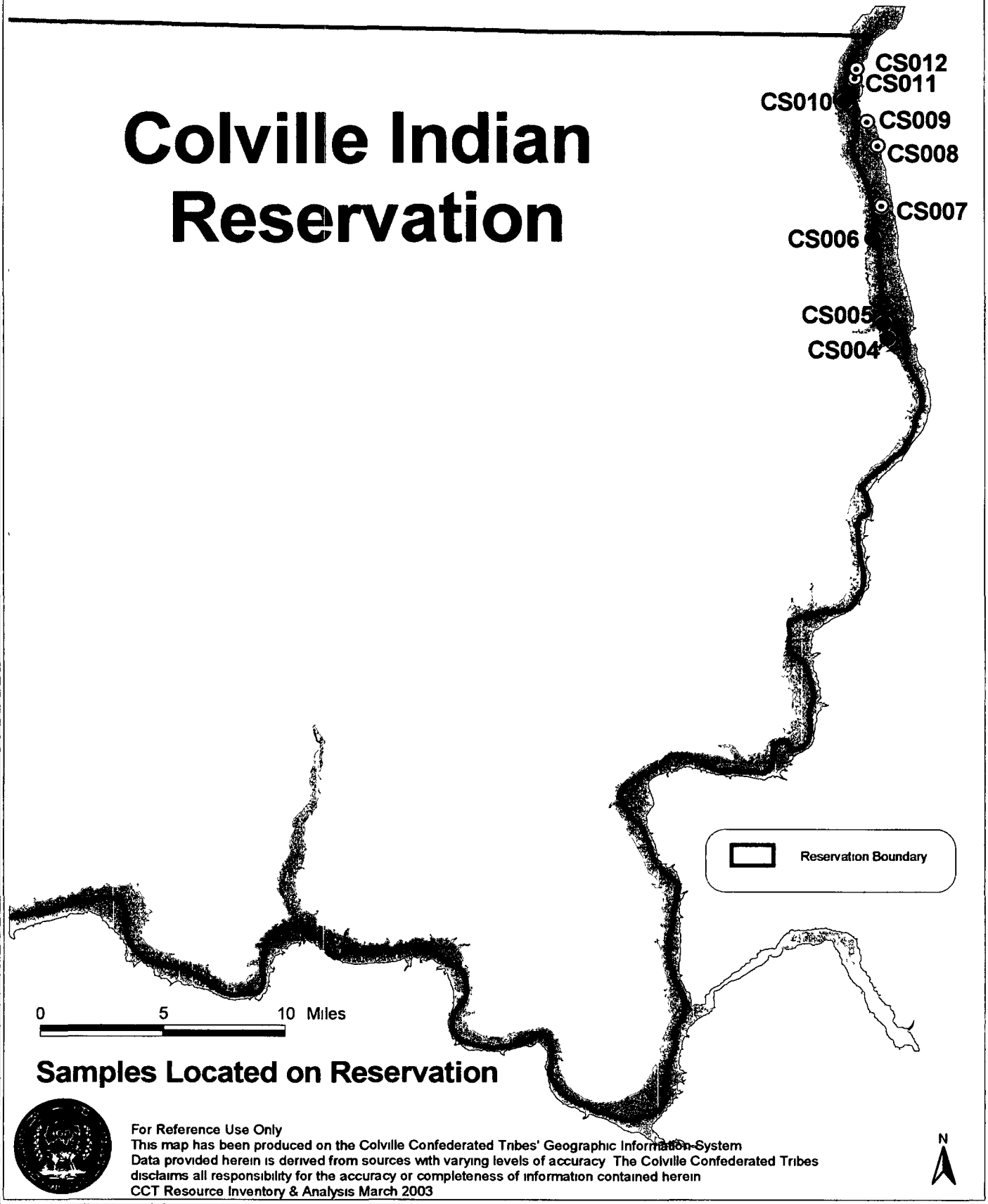
Attached is a memo from our Tribal Historic Preservation Officer, Adeline Fredine that details some of the issues around the importance of the river to the Tribes

I hope that this information will help in a better understanding of the significance of the river to the Tribes and it's membership

Sincerely,

Patti Stone, Environmental Planner
Office of Environmental Trust

2001 Upper Columbia Site Investigation



For Reference Use Only
This map has been produced on the Colville Confederated Tribes' Geographic Information System
Data provided herein is derived from sources with varying levels of accuracy The Colville Confederated Tribes disclaims all responsibility for the accuracy or completeness of information contained herein
CCT Resource Inventory & Analysis March 2003

Colville Confederated Tribes
History/Archaeology Department
MEMORANDUM

To: Patti Stone, Environmental Trust Dept.

From: Adeline Fredin, Program Manager/Tribal Historic Preservation Officer (THPO)

Date: December 19, 2002

Re: Comments of the THPO on the *Upper Columbia River Expanded Site Inspection Report*

Recommendations

Based on our review of the *Site Inspection Report* (SIR), the THPO recommends the following:

1) That the EPA more explicitly study the impacts of contamination on prey species held important by the CCT, especially sturgeon, freshwater mussels, and whitefish.

2) That the EPA study the health effects of contamination on Indian populations. These studies should include breast milk, fish consumption, and other vectors that would result in life-long exposure to contaminants from the upper Columbia.

3) That a means be found to quantify approximately the percentage of the contamination contributed by all sources located in Canada, especially the Cominco facilities. This could be used to assign a percentage responsibility for clean-up or mitigation costs to Canada.

4) That the Hazard Ranking System (HRS) document prepared for the upper Columbia River include consideration of impacts to the river as a traditional cultural property. That is, the river as a TCP should be considered a "target" or sensitive aspect of the environment in and of itself.

5) That the CCT provide a representative to observe any negotiations between the United States and Canada with regard to contaminants in the upper Columbia River. Failure for the U.S. to properly represent the interests of the CCT may be the basis for a lawsuit.

Introduction

While the THPO welcomes the study of the contaminants in the upper Columbia River conducted by the EPA, **the SIR falls short in examining the effects of these contaminants** on living things, both human and non-human, and on cultural resources of concern to the CCT. **This information will be critical if the EPA is to correctly understand the effects of this contamination and thus the proper score for the upper Columbia in the Hazard Ranking System (HRS).**

The THPO is also concerned that the CCT remind the **U.S. government of its responsibilities to represent the interests of the CCT** when dealing with foreign countries like Canada, as well as its responsibilities to address effects to cultural resources and burial sites caused by activities permitted by the United States. Both Canada and the United States will bear responsibility to address the impacts of the contamination.

History/Archaeology Department, P.O. Box 150, Nespelem, Washington 99155
(509) 634-2692 fax (509) 634-2694 thpo@televar.com

Lack of Evaluation of Effects

One of the THPO's biggest concerns is that the SIR lacks a clear evaluation of the effects of the contaminants identified during the sampling. Effects that should be addressed include effects on fish and wildlife, effects on human health, and effects on cultural resources. Without this evaluation, it will be difficult for the EPA to correctly rate this area on the HRS.

Effects on Fish & Wildlife

The SIR hints at effects on some fish species important to the traditional lifeways of the CCT, but it does not deal with the whole range of species. The effects of contaminants on whitefish are covered to a certain extent in the discussion of the "Pulp Industry," but that is strictly a review of previously conducted studies. The SIR does not take the next step and evaluate the significance of the newly gathered data for whitefish and other important species.

For example, sturgeon (*Acipenser transmontanus*) is a species important to the CCT, and has been for thousands of years. Sturgeon is a bottom dwelling species, and might be expected to suffer disproportionate harm due to contaminants in the river. Indeed, sturgeon reproduction in the upper Columbia River has been hampered, and the lack of young sturgeon in the current population in the upper Columbia River indicates that the species may not be able to survive. The contribution of contamination to this problem has not been presented in the report. Freshwater bivalves (e.g., *Margaritifera falcata*, *Gonidea angulata*) are another class of animal that lives in sediments. They also have been important to Indian lifeways for thousands of years, as attested by archaeological sites throughout the upper Columbia. The SIR reported the results of studies on *Chironomus tentans*, "a benthic invertebrate" (p.2-10), but this is not one of the species that has been significant in traditional diets. Nevertheless, the SIR suggests that contaminants, particularly slag, may have deleterious effects on shellfish both because of toxicity and the effects of particle abrasion on gills and other delicate tissues.

Effects on Human Beings (Health Effects)

Indians suffer disproportionate health effects due to environmental contamination because of their greater dependence on these natural resources than most other populations. The effects of diet should be considered, along with other factors that would lead tribal members to be in contact with contaminants (e.g., recreation on beaches or in waters affected by contamination or use of contaminated local water supplies).

The SIR does reference previous studies of the amount of contaminants in whitefish, but it does not take the next step and determine if these contaminants are present in human consumers. The presence of these contaminants in breast milk would be particularly important, as infants are at the end of the food chain and concentration effects may be most pronounced in those least able to tolerate the effects.

Effects on Cultural Resources

Both the contaminants in the upper Columbia and the process of studying and cleaning up the river have the potential to result in adverse effects on historic properties.

The THPO recognizes the efforts of the EPA to avoid damage to cultural resources during the sampling process. If "further detailed investigation of the upper Columbia River" is undertaken

as recommended in the SIR, the EPA will need to consult with the THPO again regarding the potential of these new investigations to affect cultural resources.

Contamination itself also has an affect on cultural resources. The Upper Columbia River from Grand Coulee Dam to the Canadian border is likely to be considered eligible for the National Register as a traditional cultural property (TCP)[1]. Although its status as a TCP has not been evaluated formally, the activities that members of the CCT carry out in and near the upper Columbia River are important to maintenance of their identity as a distinct community. For example, fishing in the Columbia River is one of the hallmark activities of Indian people living along the Columbia, and the natural cycles of fish availability in the river continue to structure the yearly rounds of members of the CCT. It has been so for thousands of years. It can be rightly said that this fishing tradition is part of what makes an Indian distinct from the larger population. Any actions that curtail the ability of members of the CCT to use the upper Columbia River in a traditional manner may result in an adverse effect on the river as a TCP.

The presence of contaminants in fish and other prey species and the resulting restrictions in their use would curtail the traditional use of the upper Columbia River by members of the CCT. Operations that result in the dumping of contaminants into the river is the undertaking that results in an adverse effect on the cultural resource.

Responsibility for Clean Up, Mitigation, or Offset

The report makes it clear that mining related activities, the wood pulp industry, and other activities in both the United States and Canada contributed to the contaminants currently found in the Columbia River. The responsibility for addressing these contaminants lies not with the CCT, but with the governments who permitted (even tacitly) these activities to occur. It is probable that negotiations will be undertaken to assign responsibility for clean-up, mitigation, or offset of the environmental effects.

For those activities permitted by Canada, the CCT may have to rely on the representation of the United States. As a "dependent domestic nation," the CCT has a sovereign ability to govern its own affairs, but the United States has assigned to itself alone the ability to represent all territories within its boundaries in all matters related to foreign affairs. Nevertheless, the doctrine of trust responsibility obligates the United States to represent the interests of the CCT.

The report identifies Cominco, a Canadian company, as the primary source of contamination, but they do not assign a percentage. After the percentage of the contamination contributed by Cominco is determined, they (either Cominco or the Dominion of Canada itself) should be held responsible for that percentage of the clean-up costs.

The report makes it clear that other polluters located within the United States also have contributed to the contaminants in the Columbia River. The Federal government permitted some of these actions, and as such, the Federal government has an obligation to consider the effects of those permitted actions on cultural resources, as per the National Historic Preservation Act.

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[1] The boundaries of the Upper Columbia River TCP would include not only the river itself, but also areas outside the river where important activities were undertaken that were associated with the river. While the precise boundaries of the TCP probably cannot be defined, it can be said with confidence that the river itself would be considered a contributing element of the TCP The boundaries of the TCP would also extend into Canada, as the river is a single system, regardless of international boundaries